

AGRICULTURE
STATE AGRICULTURE DEVELOPMENT COMMITTEE
State Agriculture Development Committee Rules
N.J.A.C. 2:76

SUBCHAPTER 2. RIGHT TO FARM

2:76-2.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

...

“Agricultural management practices” means practices which have been recommended by the State Agriculture Development Committee, and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., which shall include, but not necessarily

be limited to, air and water quality control, noise control, pesticide control, fertilizer application, integrated pest management and labor practices.

...

“Commercial farm” means:

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.; or

2. A farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.

...

“Farm management unit” means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

...

“Farm market” means a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51 percent of the annual gross sales of the

retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51 percent of the sales area shall be devoted to the sale of the agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least \$2,500.

...

“Site specific agricultural management practice” means a specific operation or practice which has been recommended by the appropriate board, or in a county where no board exists, the

Committee, to constitute a generally accepted agricultural operation or practice.

...

2:76-2.2 Procedure for recommending agricultural management practices

(a) The Committee at its initiative may recommend agricultural management practices.

(b) Any person or organization may request the Committee to recommend agricultural management practices.

(c) In considering agricultural management practices, the Committee may consult with the following agencies, organizations, or persons:

1. The New Jersey Department of Agriculture;
2. The New Jersey Agricultural Experiment Station, including appropriate county agents;
3. County Agriculture Development Boards;
4. The State Soil Conservation Committee;
5. Any other states' Departments of Agriculture, land grant institutions or Agricultural Experiment Stations;
6. The United States Department of Agriculture, or any other Federal governmental entity; or
7. Any other organization or person which may provide expertise concerning the particular practice.

(d) Upon the committee's recommendation, the agricultural management practice shall be forwarded to the appropriate State departments and agencies and boards and any other individuals, officials or organizations deemed appropriate by the Committee. Agricultural management practices adopted pursuant to this section do not preclude a board or the Committee from recommending a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4, provided it is consistent with the agricultural management practices adopted pursuant to this section.

2:76-2.3 Recommendations of site specific agricultural management practices where a board exists

(a) In counties where a board exists, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9 may make a request in writing to the board to determine if his or her operation constitutes a generally accepted agricultural operation or practice.

(b) In determining whether a commercial farm owner or operator meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, the board shall request the commercial farm owner or operator to provide the following in certification form:

1. Proof that the commercial farm is no less than 5 acres, produces agricultural /horticultural products worth \$2,500 or more annually, listing said products, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964 or, if the commercial farm is less than five acres, produces agricultural/horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964; and
2. Proof that the farm is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is

consistent with the municipal master plan, or which commercial farm was in operation as of July 2, 1998.

(c) The board shall advise the Committee and the municipality(ies) in which the commercial farm is located, in writing, of the receipt and nature of the request within 10 days.

(d) In recommending site specific agricultural management practices, the board may consult with the following agencies, organizations, or persons:

1. The New Jersey Department of Agriculture;
2. The State Agriculture Development Committee;
3. The New Jersey Agricultural Experiment Station, including appropriate county agents;
4. Other County Agriculture Development Boards;
5. The State Soil Conservation Committee;
6. Any other states' Departments of Agriculture, land grant institutions or Agricultural Experiment Stations;
7. The United States Department of Agriculture, or any other Federal governmental entity; or
8. Any other organization or person which may provide expertise concerning the particular practice.

(e) Upon the board's written recommendation, the site specific agricultural management practice shall be forwarded to the commercial farm owner or operator, the Committee and any other individuals or organizations deemed appropriate by the board within 30 days of the recommendation.

(f) Any person aggrieved by any decision of a board regarding site specific agricultural management practices may appeal the decision to the Committee in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 45 days from receipt of the board's final determination.

1. The decision of the Committee shall be considered a final administrative agency decision.

2. If the board's decision is not appealed within 45 days, the board's decision is binding.

2:76-2.4 Recommendations of site specific agricultural management practices where a board does not exist

(a) In counties where a board does not exist, a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9 may make a request in writing to the Committee to determine if his or her operation constitutes a generally accepted agricultural operation or practice.

(b) In determining whether a commercial farm owner or operator meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9, the Committee shall apply the same standards as found in N.J.A.C. 2:76-2.3(b) and may consult with the same agencies, organizations, or persons as found in N.J.A.C. 2:76-2.2(d).

(c) Upon the Committee's recommendation, the site specific agricultural management practice shall be forwarded to the commercial farm owner or operator, the municipality(ies) in which the commercial farm is located and any other individuals or organizations deemed appropriate by the Committee.

2:76-2.5 Utilization of agricultural management practices and site specific agricultural management practices

(a) Owners and operators of commercial farms are afforded benefits and protections pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., P.L. 1983, c.31, as amended.

(b) The failure of a commercial farm owner or operator to comply with an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2

or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3 or 2.4 shall not be utilized in any judicial proceedings or proceeding before any governmental body or agency except for the process as described in N.J.S.A. 4:1C-10.1 and N.J.A.C. 2:76-2.10.

2:76-2.6 Negotiation of conflicts between State regulatory practices and SADC recommended agricultural management practices

The Committee shall upon a finding of conflict between the regulatory practices of any State instrumentality and the agricultural management practices recommended by the Committee,

commence a period of negotiation not to exceed 120 days with the State instrumentality in an effort to reach a resolution of the conflict, during which period the State instrumentality shall inform the Committee of the reasons for accepting, conditionally accepting or rejecting the Committee's recommendations and submit a schedule for implementing all or a portion of the Committee's recommendations.

2:76-2.7 through 2:76-2.9 (Reserved)

2:76-2.10 Negotiation of conflicts between any person aggrieved by the operation of a commercial farm

(a) Any person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable board or the Committee in counties where no board exists, prior to filing an action in court. The complaint shall include detailed facts concerning the contested operation or practice.

(b) If a board exists and the dispute concerns activities that are addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-2.2

or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3, the board shall:

1. Contact the commercial farm operator to provide evidence pursuant to N.J.A.C. 2:76 2.3(b) that the agricultural operation is a commercial farm, and, if the board is satisfied that the operation is a commercial farm, hold a public hearing.

i. Testimony presented at the hearing may include verbal and written statements from aggrieved parties, the commercial farm operator, expert witnesses, and any other party deemed

appropriate by the board; and

2. Issue findings and recommendations to the Committee, the aggrieved person, the municipality(ies) in which the commercial farm is located and the commercial farm operator within 60 days of receipt of the complaint.

i. The findings and recommendations of the board shall be in the form of a written narrative providing a summary of the testimony, any supporting documents, and a copy of the agricultural management practice or site specific agricultural operation or practice utilized by the board in its recommendations and any other information requested by the Committee.

ii. Any person aggrieved by the decision of the board shall appeal the decision to the Committee within 10 days of the receipt of the board's final decision. The Committee shall schedule a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and make a determination within 90 days of receipt of the petition for review.

(1) The decision of the Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.

(2) Any decision of the board that is not appealed shall be binding.

(c) If a board exists and the dispute concerns activities that are not addressed by an agricultural management practice recommended by the Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 2:76-

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or a site specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3, the board shall forward the complaint to the Committee requesting the Committee's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice.

1. The board shall inform the Committee if it has received a request for recommending a site specific agricultural management practice and, if so, the status of the board's development of the site specific agricultural management practice.

2. Upon receipt of the request, the Committee shall contact the commercial farm operator to provide evidence that the agricultural operation is a commercial farm as defined at N.J.A.C. 2:76-2.1, and, if the Committee determines that the operation is a commercial farm, hold

a public hearing.

i. Testimony presented may include verbal and written statements from aggrieved parties,

the board or its staff, the commercial farm operator, expert witnesses and any other party deemed appropriate by the Committee.

3. The Committee shall issue findings and recommendations to the board, the aggrieved person, the municipality(ies) in which the commercial farm is located and the commercial farm operator.

i. The findings and recommendations of the Committee shall include a summary of the testimony and any supporting documents utilized by the Committee in its recommendations.

ii. The Committee's decision shall be considered a final administrative agency decision and shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court.